

How Can We Help?



How can we help?

A sampling of
services
offered by
DNR &
DHFS.



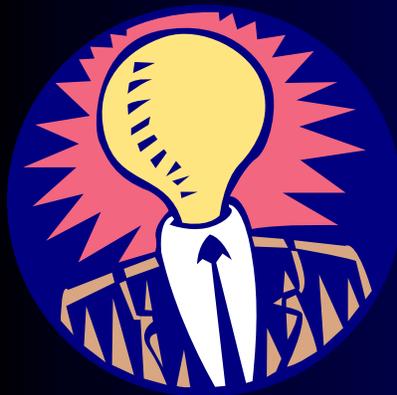
How can we help?

New ways DNR does business:

- technical innovations in NR 700
- expanded public outreach
- “fee-for-service” assistance
- liability exemptions & clarifications

new & improved

How can we help?



Technical innovations:

- single cleanup regulation
- self-implementing program
- risk-based cleanups:
 - soil
 - groundwater

How can we help?

Expanded public outreach:

- NR 700 & BF Study Groups
- green team meetings
- site-specific meetings
- training
- enhanced technology



How can we help?

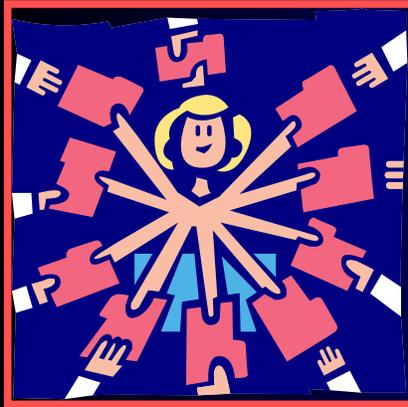


Fee-for-service assistance:

- Chs. NR 749 & 750
- more choices for assistance

we do more than closures!

How can we help?



Fee-for-service assistance:

- technical reviews
- written liability exemptions
- liability clarification letters
- written cleanup agreements

How can we help?



Where do you go for help?

- call DNR regional contact for brownfields or DNR county contact.
- send requests to regional office.
- check listing in folder.

Helpful Hint



DNR helpful hints:

- call early
- scope out what you need
- communicate to DNR when you need it

How can we help?

What we've covered:

- technical innovations
- expanded public outreach
- fee-for-service assistance

next..

- liability exemptions and clarifications

Liability Exemptions

- Who is eligible?

- local governments
- lenders
- voluntary parties
- neighbors

- What is offered?

- clarification letters
- negotiated agreements
- written exemptions

Liability Exemptions

Overview:

Wisconsin's Spill law requires those that:

- cause,
- possess (I.e. own), or
- control a hazardous substance discharge to address a discharge (I.e., cleanup),
- except where a person is specifically exempt from that general cleanup requirement.

Liability Exemptions

We will focus on:
local governments
lenders
voluntary parties
neighbors
others



Liability Exemptions



**Liability
Exemptions
for Local
Governments**

Overview of LGU Exemption

Local governmental unit (LGU)
exemption in Spill Law allows LGUs to:

- take title to a property in specified ways &
- not investigate or clean up the property
- if certain conditions are followed by the local government.

Overview of the LGU Exemption

Who is eligible?:



others...

counties

Housing
authorities

CDAs

cities

towns

villages

Overview of the Exemption

Eligible acquisition

includes:

- tax delinquency
- bankruptcy proceedings
- condemnation
- eminent domain
- escheat
- slum clearance or blight elimination
- using Stewardship funds, if signed cleanup agreement



Overview of LGU Exemption

Exemption applies unless a discharge occurs

from:

- an action taken by an LGU.
- failure of LGU to sample and dispose of hazardous substances in above ground containers.
- LGU's failure to restrict access.
- failure of LGU to remove and dispose of above-ground containers.

Overview of LGU Exemption

Other conditions:

- LGU must report discharge.
- NOT transferable from LGU to a private party.
- must remove underground storage tanks.
- LGU may need to conduct certain environmental actions if the LGU “reuses” the property.



Case Study:



Plating Property
Somewhere, WI

Environmental Characteristics of Property



- USTs present
- above ground barrels present
- metals in soil
- low level VOCs in the groundwater
- adjacent to a river

LGU Case Example

How does this work in the real world?

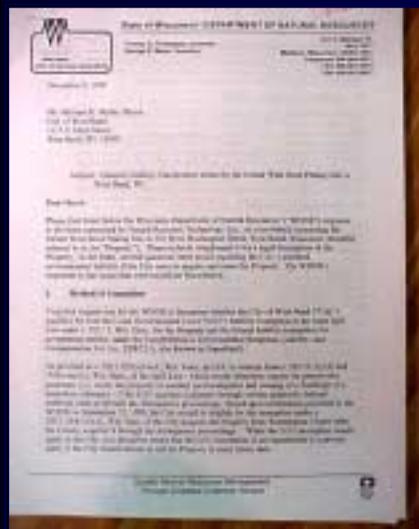
- Scenario One: LGU acquires property and does not reuse the property.
- Scenario Two: LGU acquires property and plans to reuse.

Scenario One: LGU does not reuse property

At this property, LGU:

- must acquire in “involuntary” manner
- must remove USTs
- report discharge
- should restrict access, sample and remove above ground containers in situations where new discharges could occur
- need not investigate and clean up the hazardous substance discharges, including off-site
- is looking for time to determine what to do with the property

Scenario Two: LGU plans to reuse the property



LGU requests liability clarification letter from DNR to:

- clarify acquisition
- approve reuse

Scenario 2: LGU reuses the property

LGU must:

- must acquire in “involuntary” manner.
- report discharge.
- must remove underground storage tanks.
- should restrict access, sample and remove above ground containers in situations where new discharges could occur.
- AND.....

Scenario 2: LGU reuses the property

- **If the LGU wants a letter from DNR, it must:**
 - provide sufficient environmental data to DNR
 - submit proposed redevelopment plan
- **DNR will determine if substantial threat is present given LGU’s intended use.**
 - DNR will coordinate with DHFS where needed
- **If so, LGU will need to take necessary actions to address environmental exposure(s) so no substantial threat exists, when property put to that use.**

Scenario 2: LGU reuses the property

Electroplaters, Inc., Somewhere, WI:

- DNR reviewed Phase I, II and supplemental data
- DNR evaluated data in conjunction with redevelopment plan
- Green space and river walkway was intended use
- DNR required actions:
 - remove above-ground barrels & USTs
 - soil cap - given elevated lead concentrations - and maintenance conditions, with deed restriction
 - no groundwater remedy required

References



- **Section 292.11(9)(e), Wisconsin Statutes**
- **Liability Protection for Local Governmental Units and Economic Development Corporations, Factsheet 7, Publication #RR-579, February, 2000, Wisconsin Department of Natural Resources.**
- **Clarifying Local Governmental Unit's Responsibility to Remove Tanks on Properties They Own, Fact Sheet 8, # RR-627, January, 2000, Wisconsin Department of Natural Resources.**

Liability Exemption: Lenders and Representatives



s. 292.21, Wis. Stats.

Lenders and Representatives



- Liability exemption from certain provisions in Spill Law
- Intended to encourage lenders to finance brownfield projects

Lenders and Representatives

- Lender exemption now applies to all underground tanks
- Federal exemptions under Superfund and federal underground tanks.



Lender and Representatives

Exemption applies under these conditions:

- normal lending,
- being a representative,
- inspecting property,
- enforcing a security interest (personal property or fixtures), and
- acquiring property (foreclosure)

Resources

- S. 292.21, Wis. Stats.
- Fact Sheet #5, "Environmental Liability Exemptions for Lenders and Representatives", RR-508.



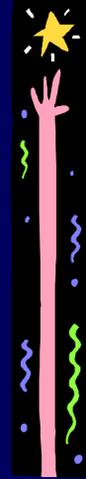
VOLUNTARY PARTY LIABILITY EXEMPTION (VPLE)



292.15, Wis. Stats.

VPLE:

- Overview
- Who can be a Voluntary Party
- Why be a Voluntary Party
- Future Liability
- Fees
- Basic Steps
- Helpful Hints



Who can enter the VPLE Process?

- Any person who submits application and pays fees.
- A person may be an individual, business, developers, or government unit
- A contaminant release must be documented on the property



Why enter the VPLE Process?

- Provides active project management
- Deals with the entire property
- Addresses past and present contamination
- Limits *future* liability for past contamination
- Is *transferable*
- Is a real PLUS+ for future development
- Required by some buyers & lenders

What must a VP do?

VP is required to:

- Investigate property & discharges that migrate off-site
- Remediate discharges
- Maintain property as required



What is reward at end of VPLE process?

Certificate of Completion:

- Awarded once DNR approves site investigation and cleanup.
- Provides "finality" to person's liability.
- Exempt from spill law and certain provisions in other state laws.

How do I participate?

- Application - \$250/property
- VP is charge hourly (70\$/ hr) for DNR time
- Advance deposit:
 - \$1000 for parcels 1 acre or less
 - \$3000 for parcels greater than 1 acre
- VP will be billed or receive refund at end if costs are more or less than deposit

VPLE Example:

Former Clark Farms Property

- Bought by City of Oshkosh and used for storage
- Fill materials on the property
- City removed some foundry sand from property and disposed of off-site
- Planned for new industrial park

VPLE Example:



- Miles Kimball entered VPLE process
- Consultant for Miles Kimball investigated property
- Some soil contaminated with PAH was removed
- DNR issued Certificate of Completion to Miles Kimball
- Miles Kimball bought the property from City

VPLE- Upcoming Changes

Two options for further VPLE liability protection, once DNR's environmental insurance rules are in effect:

- ① Interim liability protection to cover uncertainties after SI approved, but before Certificate issued.
- ② Use of natural attenuation at VPLE properties before groundwater standards are met.

Coming soon!

Helpful Hints

- Needs to be a release to the environment
- Need to investigate release, even if it migrated off the property
- Submit one application per legally described property
- Request a kick-off meeting with DNR
- Keep reminding yourself: "it isn't quick, but it is worth it"

Resources

- S. 292.15, Wis. Stats.
- Fact Sheet #2, "*Voluntary Party Remediation and Exemption From Liability*", Pub # RR-506
- DNR Regional Land Recycling Contacts

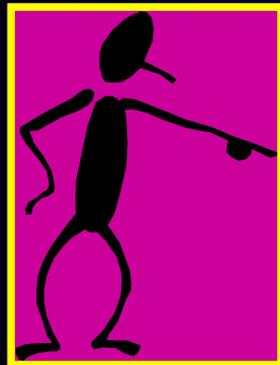
Off-Site Exemption

**Property affected by
contamination from another
source**

s. 292. 13, Wis. Stats.

Off-site Exemption

- Purpose
- Eligibility
- Necessary information
- Application & fee
- Helpful Hints



Soil contamination
groundwater contamination

Off-site Exemption

Purpose:

- limits responsibilities if contamination migrates from a source not on applicant's property
- owner of impacted property is not responsible for cleanup
- promotes reuse of properties

Off-site Exemption

Eligibility:

- an individual, governmental body, corporation, partnership or association
- own or lease property



Off-site Exemption

Applicant needs to demonstrate:

- existence of contamination on property in soil or groundwater
- did not cause and does not possess or control the discharge
- contamination has migrated there from another property

Off-site Exemption

Application & Fee:

- submit fee to Region
- include off-site exemption request form



Helpful Hints

- Sites with complex history need more information
- Will likely need GW info
- Will likely need off-site data
- Need to demonstrate no on-site source



Resources

- S. 292.13, Wis. Stats.
- Fact Sheet 10: Guidance for Dealing with Properties Affected by Off-Site Contamination, 03/01/98, RR589.
- Off-Site Discharge Exemption Request Application (Form 4400-201) 08/01/1998

Other Liability Clarification Tools

3 other tools are:

- negotiated agreements
- lease letters
- general liability clarification letters

Negotiated Agreement

- Legal contract among one or more parties, including DNR
- Clarifies legal & environmental responsibilities: 'Who does what'
- Establishes an agreed upon schedule
- Good tool for complicated transactions

Lease Letters

- Only for sites with documented discharges
- Not a liability protection, but a clarification
- With request, send copy of the lease
- Letter documenting proposed use of the property
- Not transferable

General Liability Clarification Letter

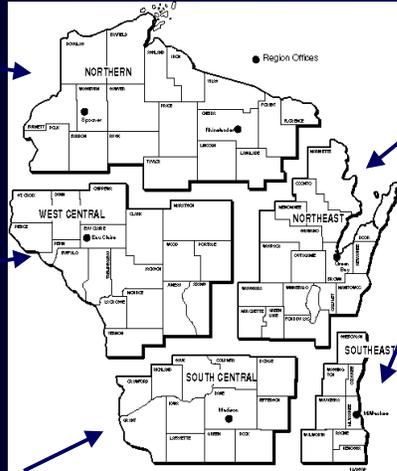
- Clarifies “*who*” is responsible for “*what*”
- Examples of situations clarified:
 - lender liability
 - LGU liability
 - EPA interest in property
 - DNR’s criteria for reopening cleanup
 - previous owner conducting cleanup

DNR Regional Land Recycling Contacts

Northern
Dan Boardman
(715) 365-8943

West Central
Loren Brumberg
(715) 839-3770

South Central
Mike Schmoller
(608) 275-3303



Northeast
Kathy Erdmann
(920) 492-5798

Southeast
Pam Mylotta
(414) 263-8758